

## *Licensed Paralegal Practitioners*

by Catherine J. Dupont

I had an interesting cab ride from the St. George Airport to the Utah State Bar's Spring Convention. When Carol, the cabbie, heard that I work for the state courts she told me about her recent experience with a legal issue and shared her opinion that there is no justice in the legal system. She won her case, but she found the experience overwhelming and expensive. Carol is not alone. Utah's 2017 court records reveal that in family law cases 69% of respondents and 56% of petitioners were self-represented. In eviction cases and debt collection cases the numbers are even worse – more than 95% and 98% of respondents, respectively, were self-represented.

The alarming number of people navigating the legal system without representation contributes to the perception that the legal system is stacked against a person who cannot afford an attorney. The Utah Supreme Court and the Utah State Bar are dedicated to addressing barriers to legal representation through innovative projects designed to improve access to the courts. One of those projects is the creation of a new profession: Licensed Paralegal Practitioner (LPP). This spring, Utah's Supreme Court approved final rules to create and regulate LPPs as part of the practice of law, making Utah the second state in the nation to establish a license to practice law outside of a traditional law degree in designated practice areas and within a limited scope of service.

### **How Did the Utah Supreme Court and the Utah State Bar Develop the LPP Program?**

The idea to create a market-based solution for the unmet needs of litigants started with a task force created by the Utah Supreme Court in May 2015. The recommendations of that task force were then assigned to the LPP Steering Committee, which has met frequently over the past year. The LPP Steering Committee's composition is broad, including judges from the trial and appellate courts, practitioners in each of the substantive law areas in which an LPP may practice, paralegals, representatives of colleges and universities with legal studies programs, the Dean of the University of Utah law school and a representative from BYU's law school, a former state senator, a consumer protection representative, Utah State Bar staff, and several public members. The LPP Steering Committee created working groups to develop education criteria, licensing requirements,

and rules of professional conduct. The working groups also met frequently over the last year and involved various stakeholders who could help with each group's specific task. The LPP Steering Committee's work has been deliberative and subject to approval by the Utah Supreme Court and the Judicial Council.

### **What is the LPP Limited Scope of Service?**

Rule 14-802 of the Rules Governing the Utah State Bar creates an exception to the authorization to practice law for an LPP. The exception permits an LPP to assist a client only in the practice areas for which the LPP is licensed. The rule limits an LPP's possible practice areas to:

- Specific family law matters, such as temporary separation, divorce, parentage, cohabitant abuse, civil stalking, custody and support, or name change;
- Forcible entry and detainer; and
- Debt collection matters in which the dollar amount at issue does not exceed the statutory limit for small claims cases.

Rule 14-802 also enumerates permissible actions for LPPs within the practice areas. Under this rule, an LPP may:

- Enter into a contractual relationship with a natural person (LPPs cannot represent corporations);
- Interview a client to determine the client's needs and goals;
- Assist a client with completing approved forms and obtaining documents to support those forms;

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- Review documents of another party and explain those documents to a client;
- Inform, counsel, assist, and advocate for a client in a mediated negotiation;
- Complete a settlement agreement, sign the form, and serve the written settlement agreement;
- Communicate with another party or the party's representative regarding the relevant forms and matters; and
- Explain to a client the court's order and how it affects the client's rights and obligations.

It is important to note that an LPP may not appear in court and may not charge contingency fees. They may, however, own their own firms, own a non-controlling equity interest in a firm with attorneys, and use the courts' e-filing systems. There will be no pro hac vice admissions and no reciprocal licensing, at least for the time being. They will be required to have trust accounts and will have the obligation to provide pro bono services.

### What is the Required Training for an LPP?

Rules Governing Licensed Paralegal Practitioner (RGLPP) 15-703 establishes the education and training requirements for an LPP. An LPP applicant must have one of the following degrees:

- A degree in law from an accredited law school;
- An Associate degree in paralegal studies from an accredited school;
- A Bachelor's degree in paralegal studies from an accredited school; or
- A paralegal certificate – or fifteen hours of paralegal studies from an accredited school – in addition to a Bachelor's degree in any subject from an accredited school.

In addition to those degree requirements, an applicant is required to:

- Complete 1,500 hours of substantive law-related experience within the three years prior to the application. These hours must include:

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Clyde Snow is pleased to welcome Keith M. Woodwell to its Salt Lake City office. Prior to joining Clyde Snow, Mr. Woodwell served as the Director for the Utah Division of Securities for 10 years. During his tenure at the Division, Mr. Woodwell oversaw and litigated hundreds of complex enforcement investigations. The experience and perspective he gained at the Division will complement Clyde Snow's Securities and Regulatory Enforcement, and Government Investigations and White Collar Defense practice groups. Mr. Woodwell will focus his practice on securities enforcement, regulatory defense, government and independent investigations, and white collar defense.

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- 500 hours of substantive law-related experience in family law if the applicant want to practice in that area; or
- 100 hours of substantive law-related experience in debt collection or forcible entry and detainer if the applicant wants to be licensed in those areas;
- Pass a professional ethics examination; and
- Pass a Licensed Paralegal Practitioner Examination for each practice area for which the applicant seeks to practice.

However, there is also a provision (RGLPP 15-705) allowing the bar to waive some of the minimum education requirements for the limited time of three years from the date the bar initially begins to accept LPP licensure applications. These waivers may be granted if an applicant demonstrates that he or she has completed seven years of full-time substantive law-related experience as a paralegal within the previous ten years.

#### Who Will Administer This New Profession?

LPPs will be officers of the court and practice law. Pursuant to authority delegated from the Utah Supreme Court, the Utah State Bar will administer all aspects of the new profession, including admissions, license renewal, and monitoring compliance with

continuing legal education requirements. Bar assistance programs, such as fee arbitration and Lawyers Helping Lawyers, will be available to LPPs. At its most recent Board of Bar Commissioners meeting, the Utah State Bar formally agreed to include in its budget the cost of administering the LPP program.

#### Are LPPs Subject to Ethical Standards and Discipline?

Yes. The Utah Supreme Court has adopted Licensed Paralegal Practitioner Rules of Professional Conduct, which provide ethical obligations for LPPs and establish Rules of LPP Discipline and Disability as well as standards for imposing discipline similar to those that govern attorneys. The Office of Professional Conduct will investigate and, if necessary, prosecute complaints against LPPs, and the rules make them subject to potential discipline.

#### Is There a Market for LPPs?

Yes. Utah undeniably has a need for more accessible legal representation. The Utah State Bar's recent survey indicates that people are often interested in self-representation with some support from a legal practitioner. The limited scope of legal services provided by an LPP is one viable solution to this issue. It's also clear that there is a strong interest among paralegals to pursue this licensing option. In a recent survey conducted by the Utah Supreme Court's LPP Steering Committee, more than 200 paralegals expressed an interest in getting licensed as an LPP. The majority were interested in establishing an LPP practice within a law firm, while about a third were interested in starting an independent LPP firm.

#### What Are the Next Steps?

There is still more work to prepare for the arrival of LPPs in the market. The court created a Forms Committee to examine the multitude of forms used in the courts. The Forms Committee has the herculean task of updating court forms, creating new forms, and deleting obsolete forms. This effort will benefit all legal practitioners in the state and is especially important for LPPs whose practice is limited to the use of forms approved by the Judicial Council. With that in mind, the Forms Committee is focusing first on updating and developing forms in the family law, debt collection and forcible entry and detainer areas of law.

Some have asked if creation of the LPP license is a field of dreams. If we create it, will they come? The LPP Steering Committee believes the Utah model for the LPP program is a promising solution to a growing need in the state. In the meantime, Utah Valley University is preparing to start classes for LPPs in the fall of 2018, and we hope to have our first Licensed Paralegal Practitioners in 2019.

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